IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.249 OF 1995

Manoj Ghanshyamdas Chhutani]
Aged 25 years, residing at]
Rajsarthi Co.Op.Housing Society]
Nashik.]..Appellant

Versus

The State Govt. of Maharashtra]..Respondent

....

Ms.Shraddha Mohite (appointed) for the appellant
Mr.B.H.Mehta, A.P.P. for the State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-original accused no.1 challenges the judgment and order dated 22nd May, 1995, passed by the learned IIIrd Additional Sessions Judge, Nashik in Sessions Case No.172 of 1994. By the said judgment and order, the appellant has been convicted for the offence under Sections 498-A and 306 of IPC and he is sentenced to suffer R.I. for six months for the offence under Section 306 of IPC and to pay a fine of Rs.500/- in default, R.I. for one month. However, for the offence under Section 498-A of IPC, no separate sentence has been passed.

. It may be stated here that the appellant was charged for the offences under Sections 498-A and 306 of IPC along with his mother Jashodabai Ghanshyamdas Chhutani i.e. original accused no.2. However, accused no.2 Jashodabai was acquitted of both the offences.

2. Briefly stated the prosecution case is as under:

. The complainant P.W.1 Ram Arjundas Puraswani is the resident of Nashik. He resided in Panchavati area. P.W.4 Bhavna w/o Ram Puruswani is his wife. Father of Ram Puraswani expired long back. His elder sister Rani was married to the appellant about two and half years prior to the incident. The said marriage had taken place on 1st March, 1993 at Khandwa in Madhya Pradesh. After the marriage, the couple stayed for some months at Khandwa. Thereafter, they came to Nashik. There they resided with P.W.1 Ram for sometime. Thereafter, P.W.1 Ram got a flat on rent for the appellant in Rajsarthi Society, Indira Nagar, Nashik. According to P.W.1 Ram Puraswani before her marriage, his sister was serving in a company and she had a bank account in NAMCO Bank. The Bank balance in the said account was Rs.20,000/-. She also owned a locker in the said Bank. The appellant insisted to Rani to give

Rs.20,000/- to him as he was jobless. He used to quarrel with Rani on this account and also beat her.

3. On 1st March, 1993, the complainant was informed on telephone that Rani was admitted in hospital due to burn injuries. He immediately rushed to the Nasik Civil Hospital. There he met his sister Rani and he had talk with her. Rani told him that she set herself on fire due to harassment and illtreatment and thereafter, Rani died in the midnight on 10th March, 1993. After the death of Rani, P.W.1 Ram Puraswani lodged his FIR (Exhibit-21) against the appellant and his mother with Bhadrakali Police Station. The body of Rani was sent for post mortem. She was found to have suffered 94% burns. Cause of death is given as shock due to extensive burn injuries. After completion of investigation, the charge sheet came to be filed.

4. In due course the case came to be committed to the Court of Sessions for trial. The charge was framed against the appellant-accused alongwith co-accused under Sections 498-A and 306 read with Section 34 of IPC. The accused pleaded not guilty and claimed to be tried. The defence of the accused is that Rani caught fire accidentally while heating

milk on the stove.

5. During the course of trial, prosecution has examined eight witnesses. Out of the said witnesses, two witnesses are most important in relation to the prosecution case i.e. P.W.1 Ram Arjundas Puraswani the brother of the deceased Rani and P.W.4 Bhavna Ram Puruswani who is the wife of P.W.1 Ram Puraswani. After going through the evidence adduced by the prosecution, the learned Judge has acquitted the original accused no.2 Jashodabai Ghanshyamdas Chhutani. However, the learned Judge has convicted and sentenced the appellant as stated in para 1 of this judgment. Hence, this appeal.

6. In this case, Mr.I.S.Thakur filed appearance for the appellant. However, thereafter as he was appointed as an Addl. Public Prosecutor, he informed the appellant but there was no response to the communication sent to the appellant. On 7th September, 2004 a telegram was sent to the appellant. The postal remark shows that the said telegram could not be delivered to the appellant as "addressee unknown". A xerox copy of the said intimation from the postal office, has been tendered in Court. The same is taken on record and marked as

'X' for identification. In this view of the matter, in view of the judgment of the Supreme Court in the case of **Rishi Nandan Pandit Vs. State of Bihar, reported in (1999) 8 Supreme Court Cases 644,** Ms.Shraddha Mohite was appointed as *amicus curiae* to represent the appellant. I have heard Ms.Shraddha Mohite *amicus curiae,* for the appellant and Mr.B.H.Mehta, the learned A.P.P. for the State. I have also perused the entire record of this case including the judgment and order of the learned Sessions Judge. After hearing both sides at length and after perusing of the record, this appeal is being disposed of on merits. After carefully going through the record and carefully considering the matter, I have reached the conclusion that this appeal deserves to be allowed.

7. The conviction of the appellant is mainly based on the evidence of P.W.1 Ram Puraswani and P.W.4 Bhavna Puraswani who are the brother and sister in law of deceased Rani. As the prosecution story has been taken from the examination-in-chief of P.W.1 Ram Puraswani, I do not intend to repeat the same here. However, I shall broadly refer to his evidence. From the evidence of P.W.1 Ram Puraswani, it appears that as the appellant was jobless, he was insisting that bank balance of Rs.20,000/- lying in

the name of Rani, be given to him. On account of this, there used to be quarrel with Rani and appellant used to beat Rani. The incident took place on 1st March, 1993. On being informed that Rani had received burn injuries and was admitted in hospital, P.W.1 Ram Puraswani went and met his sister who informed him that she set herself on fire due to harassment and illtreatment from her husband and his mother. The evidence of P.W.4 Bhavna Puraswani is on the similar lines as that of P.W.1 Ram Puraswani.

8. In the present case, two dying declarations of Rani came to be recorded. In the first dying declaration, she does not implicate anyone. In the second dying declaration (Exhibit-30), she has stated that after coming to Nashik, her husband was working in a shop at Bhadrakali, since about a year, her mother-in-law came to reside with them and she used to constantly quarrel, abuse and harass her. Since about 4 to 5 months prior to the incident, her husband had lost his job. Since then, her mother in law was harassing her even more. Her mother-in-law had been fighting with her since two days prior to the incident and her mother-in-law abused her. During this period, her husband had given two slaps to her. On the day of the incident at about 3 to

4.00 p.m. when she was heating milk for her minor daughter on the stove, her mother-in-law poured five litres rockel on her person. Thereafter, Rani caught fire. However, immediately thereafter, Special Executive Magistrate, Mr.Baviskar enquired from Rani as to who all were present in the house at that time. Whereupon, Rani replied that her daughter and sister-in-law were in the outer room and her mother in law and father in law had gone out so also her husband was not present in the house at that time i.e. the time when she caught fire. Thus, her dying declaration (Exhibit-30) shows that the incident is of homicidal death and not of a suicidal one. However, Rani had also specifically stated that both the accused persons were out of the house at that time. In such case, it cannot be said that it was a homicidal death. If one reads this dying declaration (Exhibit-30), it does not lead the Court to positively infer that Rani had died a suicidal death on 10th March, 1993 because of the incident dated 1st March, 1993. Moreover, admittedly, on 1st March, 1993, her previous dying declaration was recorded by Special Judicial Magistrate Mr.J.K.Chavan. In this previous dying declaration, Rani had unequivocally stated that while heating milk for her minor daughter, stove flared up and she received burn injuries. She has

stated that her husband extinguished the fire and brought her to the hospital. Looking to all these circumstances it is seen that there are glaring inconsistencies in both the dying declarations. Moreover, in the second dying declaration (Exhibit-30) also Rani has taken an inconsistent stand. The latter part of the dying declaration is not consistent with the earlier part of the dying declaration. The learned Judge has rightly disbelieved both the dying declarations. In such case, we are only left with the evidence of P.W.1 Ram Puraswani and his wife P.W.4 Bhavna. I have already discussed the evidence of both these witnesses above. In this case, it is pertinent to note that the stand taken by Ram Puraswani and his wife that in the last few months the appellant was jobless and hence, he was harassing Rani to give him Rs.20,000/- which was in the account of Rani in NAMCO Bank. However, in the second dying declaration the stand which was taken by Rani is that mainly the mother of the appellant was harassing her. As stated earlier, in the first dying declaration, Rani has not implicated any one. In the second dying declaration, Rani has mainly implicated her mother in law. There is one solitary statement against her husband i.e. in the quarrel which preceded the incident on 1st March, 1998 her

husband had slapped her twice. However, for the reasons stated above, I am not inclined to rely on the said dying declaration. The reason for Rani committing suicide as made out in the dying declaration and the reason as made out by her brother and sister in law of Rani, for committing suicide is entirely inconsistent. Two different versions have been given one in the dying declaration (Exhibit-30) and the other version is given by P.W.1 Ram Puraswani and P.W.4 Bhavna Puraswani. Thus, there arises serious inconsistencies in respect of the reason why Rani committed suicide due to which I find it unsafe to rely on the evidence of these two witnesses.

9. One other reason as to why I do not find the evidence of P.W.1 Ram Puraswani and P.W.4 Bhavna Puraswani to be reliable and trustworthy is that the incident had taken place on 1st March, 1993. Immediately on the very day on being informed, Ram Puraswani and his wife, rushed to the civil hospital to meet his sister. Ram has stated that on 1st March, 1993 when he met his sister Rani, his sister informed him that very evening that she had set herself on fire due to the harassment and illtreatment from her husband and mother in law. Even after Rani had supposedly informed Ram about

this fact, Ram has not made any complaint to the police. In fact, he had admitted that he did not complain to the police prior to the lodging of his complaint Exhibit-21 which complaint was lodged only on 10th March, 1993. P.W.4 Bhavna stated that when she had enquired with Rani, Rani told her that because of daily troubles she set herself on fire. However, Bhavna does not state that Rani told her that on account of any harassment or illtreatment specifically at the hands of appellant that Rani set herself on fire. From the version which Rani had given to Bhavna, it does not appear that because of any harassment or ill-treatment on the part of the appellant, Rani set herself on fire. Bhavna had also not lodged her complaint with the police, moreover, her statement is belatedly recorded after about ten days after the incident. There is no explanation at all given by the witnesses i.e. P.W.1 Ram Puraswani and P.W.4 Bhavna Puraswani as to why the statements were given so belatedly. Had Rani really told these two witnesses that due to the harassment and illtreatment at the hands of her husband and her mother in law, she had set herself on fire, these witnesses who were in the hospital all along, would have definitely lodged a complaint earlier, but no steps have been taken by them till 10th March, 1993. This leads to the conclusion that

Rani had not made any such disclosure to these witnesses implicating the appellant and his mother. In this view, the stand taken by Rani in her first dying declaration that she sustained burn injuries accidentally while heating the milk, appears to be the true and correct state-of-affairs. Looking to the fact that the F.I.R. is more than ten days late and no explanation at all has been furnished by the prosecution for the delay in recording the FIR or statements, I am not inclined to place reliance on the evidence of these two witnesses. Looking to the facts and circumstances of this case, it appears that the appellant has been belatedly roped in as an after thought.

10. Before parting with this judgment, I would like to record my appreciation for the able assistance given by Ms.Shraddha Mohite, *amicus curiae,* appearing for the appellant and Mr.B.H.Mehta, the learned A.P.P. for the State. Both of them have meticulously prepared and argued the matter within a short span.

11. For the reasons stated hereinabove, I think think that this is a fit case wherein the appellant should be extended benefit of doubt.

12. In the result, this appeal is allowed. The conviction and sentence for the offence under Sections 498-A and 306 of IPC, imposed by the learned Additional Sessions Judge, Nashik, dated 22nd May, 1995, is set aside and the appellant is acquitted therein. The fine amount if any, paid by the appellant, be refunded to him. The appellant is on bail. His bail bonds shall stand cancelled.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.249 OF 1995
(Manoj Ghanshyamdas Chhutani Vs. The State of Maharashtra)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Ms.Shraddha Mohite, amicus curiae, for Appellant
Mr.B.H.Mehta, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 1, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The appeal is allowed. The conviction and sentence for the offence under Sections 498-A and 306 of IPC, imposed by the learned Additional Sessions Judge, Nashik, dated 22nd May, 1995, is set aside and the appellant is acquitted therein. The fine amount if any, paid by the appellant, be refunded to him. The appellant is on bail. His bail bonds shall stand cancelled.

(V.K.TAHILRAMANI, J.)